

EMERGENCY MENTAL HEALTH CARE: HOW TO NAVIGATE IN HARRIS COUNTY

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You receive a call from your client who is in a panic about her son, Charlie. She tells you that Charlie has bi-polar disorder and has not been taking his medication. He is refusing to eat, drink, or bathe and mumbles something about “all going to die.”. What do you tell your client to do to get the sick person treated quickly and safely? It is time to research. Which court has jurisdiction? What law applies? How does the law work?

Probate Court No. 3 has primary responsibility for mental illness proceedings in Harris County.¹ Probate Court No. 4 has secondary responsibility.² Probate Court No. 3 has staff at the Harris County Psychiatric Center (“HCPC”) located at 2800 S. MacGregor Way, Houston, Texas, to handle administration of the 1,342 average monthly mental health applications.³

Texas Health and Safety Code sections 573 and 574 provide three alternate ways a person can be brought into the mental health system for evaluation.⁴ The person can be brought into a mental health facility by either their guardian or by a peace officer. Also, any adult who has witnessed a mentally ill person exhibiting dangerous behavior may file an application to have the person apprehended.⁵

If the person is actively homicidal or suicidal, **DO NOT WASTE TIME-----**
CALL THE POLICE! This option is available twenty four hours a day. When you call 911, request a Crisis Intervention Team (“CIT”) officer from the Houston Police Department’s (“HPD”) Mental Health Unit. These HPD officers are specially trained in techniques allowing for safe detention and transport of a mentally ill citizen.⁶ However, any peace officer can take a person to the nearest mental health facility for evaluation when he believes there is not enough time to obtain a warrant.⁷ The peace officer can do so when he reasonably believes that because of a mental illness there is a substantial risk of serious harm to the person or others unless the person is immediately restrained.⁸ The officer can take custody of your client’s son solely from information she provides or from the circumstances surrounding his encounter with the son.⁹ You

can reassure your client that Charlie will be taken only to a designated mental health hospital--- not jail--- as the officer can transport him to jail only under an extreme emergency.¹⁰

A second less traumatic transport is realistic in some situations. If your client is the court appointed guardian of the person of her adult child (“ward”), she can transport him directly, without peace officer assistance or a warrant, to HCPC or any of the local mental health facilities for evaluation.¹¹ Your client can take Charlie for in-patient evaluation when she has the same concerns as the officer.¹² She can also transport Charlie if he demonstrates behavior, emotional distress and *deterioration* in his mental condition so that he cannot remain at liberty.¹³ This option is also available at any time of the day. Having a familiar family member/guardian take him to the hospital reduces the amount of stress on the mentally ill ward. Upon arrival, the officer will simply fill out a notification of detention form but the guardian must immediately file an application for emergency detention with the facility.¹⁴

Third, ANY adult, regardless of their relation, who has witnessed the mentally ill person acting in a dangerous manner, may apply for emergency detention of that person.¹⁵ This option is available during regular court business hours. The application should be filed with the county clerk/court at HCPC and must include the person’s location and clear details of what he has said or done that causes concern for his or others’ safety.¹⁶ Examples of granted applications are “my brother is hallucinating that I am the devil and threatened to kill me” or “my brother is bi-polar and has not eaten or bathed in 3 days and is refusing medications.”. Examples that won’t meet the code’s standard are “my brother is not following directions.” or “my brother is agitated.”. Prepare your client to be at HCPC for a few hours while the clerk/court processes the application for the judge’s review.^{17 18}

During regular business hours, a statutory probate judge or associate judge reviews and signs the warrants.¹⁹ After hours, an assigned magistrate reviews and signs the warrants.²⁰ Upon review of the application and finding that Charlie’s behaviors are a substantial, imminent risk to himself or others unless he is immediately restrained, the judge or magistrate will issue a warrant to an on-duty peace officer.²¹ In Harris County, the majority of warrants are served by select Precinct One constables, who are housed at HCPC. Usually, within a few hours the constables will locate, take into custody and transport Charlie to the identified hospital for treatment.

Regardless of how Charlie arrived, he initially can be detained in the mental health facility for only forty-eight hours and must be examined by the physician within the first twelve hours.²²

If the physician feels that Charlie needs in-patient treatment then he must file with the court a statement describing how Charlie's mental illness is causing him and/or others imminent risk of harm and that immediately detaining him in the hospital is the least restrictive means for treatment.²³ If the judge is convinced that a substantial risk does exist, then he may sign the order of protective custody ("OPC") and Charlie will either remain in or be transported to the appropriate mental health facility.²⁴ However, Charlie does have several rights during this time including the right to notice of the detention, that the detention could result in a longer period of involuntary commitment and to have access to and retain an attorney.²⁵

When an OPC is signed, the court is required to appoint an attorney to represent any patient who does not already have one.^{26 27} An attorney is appointed by each court probate court to represent all patients appearing on that week's docket.²⁸ The attorney represents the patient from the probable cause hearing through the final court ordered mental health/medication hearings.²⁹ All mental health dockets are prosecuted by the county attorney's office.³⁰ In Harris County, the assigned assistant county attorney is Dana Drexler who can be reached at (713)-741-6016.

A hearing must be held within seventy-two hours of the OPC to determine if there is probable cause ("PC") that Charlie is at risk and must remain in the hospital pending the outcome of the final court ordered mental health hearing.³¹ Charlie and his attorney shall receive written notice stating he has been placed under a protective custody order, the grounds for the order, and the time and place of the PC hearing.³² The PC dockets are heard at HCPC on Mondays, Wednesdays and Fridays. Charlie, through his attorney, can challenge any evidence alleging the need for him to remain in the hospital.³³ But if the court signs the order for continued detention, determining that he is at risk to cause harm to himself or others; he will stay in the hospital pending the remaining proceedings.³⁴

If the physicians evaluating Charlie determine that he needs treatment; then an application for court ordered mental health services will be filed by the county attorney's office.³⁵ The law requires that court ordered mental health services hearings ("final hearing") will be held within fourteen days of the filing of the application.³⁶ The court may grant one or more continuances upon a good cause motion/agreement, but the continuances may not extend later than thirty days from filing of the application.³⁷ Final hearings are heard at HCPC on Mondays and Fridays. At the final hearing, Charlie has the right to notice, to be present, to be on the record and to be heard by a jury.³⁸ However, most cases are bench trials.

At the final hearing, upon reviewing the certificates of medical examination³⁹ and the oral testimony of at least one physician, if the judge finds by clear and convincing evidence that Charlie is mentally ill and is 1) likely to cause serious harm to himself to others or is suffering severe and abnormal mental, emotional, or physical distress; 2) is experiencing deterioration in the ability to function independently or to provide for basic needs; or 3) is unable to make a rational and informed decision regarding treatment, then the judge will sign the order committing Charlie for treatment.⁴⁰

Psychotropic medications, imperative for improved mental status, are occasionally refused by the patient. A guardian can consent for the hospital to require the administration of psychotropic medications, without a court order.⁴¹ If the patient is not under a guardianship then a separate hearing following the final hearing must be held for the court to require a patient to take psychotropic medications.⁴² The medication hearings are typically heard immediately following final hearings.⁴³ Charlie's rights are the same as in the final hearing and the court will orally notify him of the ruling.⁴⁴

In medication hearings the court will consider Charlie's preferences, religious beliefs, and perspective of the risks and benefits of taking the medication.⁴⁵ The court also considers Charlie's prognosis, the consequences with and without the medication and any lesser intrusive treatments to psychotropic medications.⁴⁶ If the testimony and medical evidence show by clear and convincing evidence that Charlie lacks the capacity to consent and it is in his best interest, the court will sign an order allowing the facility to force the administration of psychotropic medications.⁴⁷ Charlie will then receive in-patient treatment, not to exceed forty five days (or ninety days if the judge finds that a longer period is necessary), until the doctor believes he will not harm himself or others.⁴⁸ However, he does have the right to appeal the final and forced medication hearing.⁴⁹

Keep in mind that the forced medication order does not follow Charlie upon discharge and is only applicable while the order of commitment is in effect.⁵⁰ So, once Charlie has been treated and discharged, if he experiences another psychotic break, your client will have to start the process all over again. However, you are now armed and ready with advice on how to help Charlie. Godspeed, Charlie.

¹ TEX. GOV'T CODE ANN. § 25.1034 (Vernon Supp. 2004).

² *Id.*
³ *Id.*
⁴ TEX. HEALTH & SAFETY CODE ANN. §§ 573 & 574 (Vernon 2010).
⁵ *Id.* §§ 573.001, 573.003, 573.011.
⁶ To learn more call (832)-394-4200 or (713)-884-3131 or visit <http://www.houstoncit.org/>
⁷ TEX. HEALTH & SAFETY CODE ANN. § 573.001 (Vernon 2010).
⁸ *Id.*
⁹ *Id.*
¹⁰ *Id.*
¹¹ *Id.* § 573.003.
¹² *Id.*
¹³ *Id.*
¹⁴ *Id.* §§ 573.002 & 573.004.
¹⁵ *Id.* § 573.011.
¹⁶ *Id.*
¹⁷ TEX. HEALTH & SAFETY CODE ANN. § 573.012 (Vernon Supp. 2010).
¹⁸ For a list of mental health facilities in Harris County, contact the court at HCPC at (713)-741-6020.
¹⁹ TEX. HEALTH & SAFETY CODE ANN. § 573.012 (Vernon Supp. 2010).
²⁰ *Id.*
²¹ *Id.*
²² TEX. HEALTH & SAFETY CODE ANN. § 573.021 (Vernon 2010) & § 574.022 (Vernon Supp. 2010).
²³ TEX. HEALTH & SAFETY CODE ANN. § 573.021 (Vernon 2010).
²⁴ TEX. HEALTH & SAFETY CODE ANN. § 573.012 (Vernon Supp. 2010).
²⁵ TEX. HEALTH & SAFETY CODE ANN. § 573.025 (Vernon 2010).
²⁶ *Id.* § 574.024.
²⁷ Patients who hire their own attorney are less than 1% of the docket.
²⁸ TEX. HEALTH & SAFETY CODE ANN. § 574.003 (Vernon 2010).
²⁹ *Id.*
³⁰ *Id.* § 574.001.
³¹ *Id.* § 574.025.
³² *Id.* § 574.024.
³³ *Id.* § 574.025.
³⁴ *Id.* § 574.026.
³⁵ *Id.* § 574.001.
³⁶ *Id.* § 574.005.
³⁷ *Id.*
³⁸ *Id.* §§ 574.006, 574.031, 574.032.
³⁹ By the hearing, there must be on file at least two sworn certificates of medical examination for mental illness completed by different physicians each of whom has examined Charlie during the preceding 30 days.
⁴⁰ TEX. HEALTH & SAFETY CODE ANN. §§ 574.031, 574.034, 574.036 (Vernon 2010).
⁴¹ *Id.* § 574.103.
⁴² *Id.* § 574.106.
⁴³ *Id.*
⁴⁴ *Id.* § 574.105.
⁴⁵ *Id.* § 574.106.
⁴⁶ *Id.*
⁴⁷ *Id.*
⁴⁸ *Id.* § 574.034.
⁴⁹ *Id.* §§ 574.070 & 574.108.
⁵⁰ TEX. HEALTH & SAFETY CODE ANN. § 574.110 (Vernon Supp. 2010).